

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos.5913 and 5914 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1- Yes

2 to 5 - No

RAJNIKANT NARHARI BHATT

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Petitioners
MR UDAY BHATT, ASSTT GOVT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/01/98

ORAL JUDGEMENT (Per : C.K.Thakker,J.)

In both these petitions, a common question of law arises for our determination and hence, it will be convenient to decide both of them by a common judgment.

#. Both the petitions have been filed by the petitioners for an appropriate writ, direction or order quashing and setting aside order passed by the Officer on Special Duty (Land Acquisition), GIDC, Ahmedabad on July 19, 1989 refusing to make reference to a competent court as requested by the applicants on the ground that the award made by him was a consent award under Sec.11(2) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act').

#. The case of the petitioners is that they are residents of Villages Fansa-Keraj and Sarigam, Taluka Umbergaon, Valsad District. All of them owned and possessed agricultural land and they were earning their livelihood by doing agricultural activities in the said land. It is their case that for public purpose, namely, for construction of Industrial Estate on behalf of Gujarat Industrial Development Corporation ('Corporation' for short) at Fansa Village, proceedings were initiated under the Act. A notification under Sec.4 was published in Gazette in August, 1984 and under Sec.6 in July, 1987. Notices were issued under Sec.9 of the Act and an award was made on July 19, 1989 under S.11 of the Act.

#. It was the case of the petitioners that there was no agreement between the parties. The petitioners did not agree with the terms and conditions said to have been arrived at between the parties. The second respondent, therefore, had no power, authority or jurisdiction to treat the award as "consent award" by invoking the provisions of Sec.11(2) of the Act. They, therefore, made an application under Sec.18 of the Act before the second respondent praying therein to refer the matters to a competent court. The second respondent, however, was of the view that since the parties had agreed, the matter was covered by Sec.11(2) of the Act and application filed by the petitioners to refer the matter to a competent court was not maintainable. On that ground alone, the application came to be rejected which action is impugned in the present petitions.

#. The learned counsel for the petitioners vehemently contended that it was the case of the petitioners that they had not agreed and the so-called "consent terms" were not really arrived at between the parties. An error of law apparent on the face of the record has been committed by the second respondent in treating award as consent award under Sec.11(2) of the Act. In the facts and circumstances of the case, the cases were covered by Sec.11(1) of the Act and it was

obligatory on the part of the second respondent to refer the matter to a competent court in accordance with law. By not doing so, he committed a jurisdictional error which requires to be corrected by exercising powers under Article 226 of the Constitution of India.

#. Mr.Bhatt, learned Asstt. Govt. Pleader, on the other hand, contended that the point is no longer res integra. For that, he placed reliance on the decision of a Division Bench of this Court in Dinesh Soni and others Vs. ONGC and another, 1994(2) GLH 131. Almost in similar circumstances, a Division Bench of this Court held that when there was an agreement between the parties, an award which could be passed under the provisions of the Act would be under Sec.11(2) and it was not open to the parties to invoke Sec.11(1) of the Act and to request the Land Acquisition Officer to refer the matter to a competent Court. Mr.Bhatt also made a statement at the bar that Dinesh Soni and others (supra) was confirmed by the Supreme Court. He, however, also placed reliance on other decisions of the Apex Court. In State of Gujarat Vs. Daya Shamji Bhai, AIR 1996 S.C. 133 and in Ishwarlal Premchand Shah and others Vs. State of Gujarat and others, AIR 1996 S.C. 1616, their Lordships of the Hon'ble Supreme Court in no uncertain terms held that if the parties had agreed and accepted compensation on the basis of an agreement, sub-sec.(2) of Sec.11 would apply. The Apex Court held that no application for reference would lie if the case falls under Sec.11(2) of the Act.

#. In our view, the law laid down by the Apex Court is squarely applicable to the facts of the present case. In the instant case also, the respondent No.2 was satisfied that there was an agreement and pursuant to consent terms, amount was fixed and substantial payment was accepted by the petitioners. He was, therefore, right in rejecting the prayer to refer matters to a competent court.

#. For these reasons, in our opinion, the petitioners cannot make any grievance and order passed by the second respondent rejecting the application, treating the award as consent award under Sec.11(2) cannot be said to be illegal, erroneous or contrary to law. There is no substance in the petitions and the petitions are accordingly dismissed. In the facts and circumstances of the case, no order as to costs.

Sd/-

(C.K.Thakker,J.)

Sd/-

Date: 19-01-1998 (R.P.Dholakia,J.)

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